111TH CONGRESS
2D SESSION

H. R. 5229

To amend the Help America Vote Act of 2002 to establish standards for the transparent and accurate tabulation of votes and aggregation of vote counts in elections for Federal office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2010

Mr. HOLT introduced the following bill; which was referred to the Committee on House Administration

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A BILL

To amend the Help America Vote Act of 2002 to establish standards for the transparent and accurate tabulation of votes and aggregation of vote counts in elections for Federal office, and for other purposes.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3   **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Vote Tabulation Audit

5 Act of 2010".

SEC. 2. REQUIRING STATES TO MEET STANDARDS FOR TRANSPARENT AND ACCURATE TABULATION OF VOTES AND AGGREGATION OF VOTE COUNTS.

(a) IN GENERAL.—Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraph:

"(7) REQUIREMENTS FOR TRANSPARENCY IN TABULATION OF VOTES AND AGGREGATION OF VOTE COUNTS.—

"(A) REQUIREMENTS.—In tabulating votes and determining the aggregate vote count in any election for Federal office, each State shall meet the following requirements:

"(i) Upon the closing of the polls at each polling place, the appropriate election official shall tabulate each of the following:

"(I) The number of regular ballots cast on each voting machine, and the number cast by hand on regular or emergency ballots, at the polling place.

"(II) The number of votes per candidate (excluding over-votes).

"(III) The number of spoiled ballots.

3

1   "(IV) The number of over-votes,
2   under-votes, and blank votes (or their
3   equivalent) for each candidate.

4   "(V) The number of provisional
5   ballots cast, both on paper and by vot-
6   ing machine.

7   "(VI) The serial number or num-
8   bers (in the case of a system with
9   more than one such number), model,
10   and manufacturer of each voting sys-
11   tem on which votes were recorded at
12   the polling place.

13   "(VII) The total number of indi-
14   viduals who appeared at the polling
15   place to cast ballots, determined by
16   reference to the number of signatures
17   in a sign-in book or other similar
18   independent count.

19   "(VIII) The total number of vot-
20   ers who cast ballots in all elections for
21   Federal office on the ballot at the
22   polling place.

23   "(IX) Such other information as
24   the State may require.

1 "(ii) The appropriate election officials

2 at the polling place shall prepare a prelimi-

3 nary certification of the vote count at the

4 polling place (as tabulated under clause

5 (i)) under the observation of the certified

6 tabulation observers admitted to the poll-

7 ing place under subparagraph (F) (if any),

8 shall announce the vote count orally, and

9 shall prepare and post a paper copy of the

10 preliminary certification for the admitted

11 tabulation observers at the polling place.

12 Such officials shall ensure that each of the

13 certified tabulation observers admitted to

14 the polling place has full access to observe

15 the process by which the preliminary cer-

16 tification is produced and a reasonable pe-

17 riod of time to review the preliminary cer-

18 tification before the polling place is closed,

19 and (if feasible) shall provide such observ-

20 ers with identical duplicate certificates.

21 "(iii) After the requirements of clause

22 (ii) are met, the appropriate election offi-

23 cial, in the manner prescribed by applica-

24 ble State or local law, shall transmit the

25 information contained in such preliminary

1 certification to the central vote tabulation

2 center designated for the tabulation of

3 votes by the chief State election official.

4 ''(iv) As soon as practicable after in-

5 formation is entered into the central vote

6 tabulation center under clause (iii), sub-

7 paragraph (B) (with respect to early

8 votes), subparagraph (C) (with respect to

9 absentee ballots), and subparagraph (D)

10 (with respect to provisional ballots counted

11 as votes in the election), the appropriate

12 election official shall display (at a promi-

13 nent location accessible to the public dur-

14 ing regular business hours and in or within

15 reasonable proximity to the polling place) a

16 paper copy of the preliminary certification

17 prepared under clause (ii), and the infor-

18 mation shall be displayed on the official

19 public websites of the applicable local elec-

20 tion official and chief State election official

21 in a manner which displays, together with

22 the name of the designated voting official

23 who entered the information and the date

24 and time the information was entered, each

25 of the following:

1   "(I) The information tabulated

2   under clause (i).

3   "(II) The number of early ballots

4   cast on each day of the early voting

5   period.

6   "(III) The aggregate number of

7   early votes cast for each candidate.

8   "(IV) The number of absentee

9   ballots received on each day on which

10   such ballots are permitted to be re-

11   ceived and counted under State law.

12   "(V) The aggregate number of

13   absentee votes cast for each can-

14   didate.

15   "(VI) The aggregate number of

16   provisional ballots cast.

17   "(VII) The number of provisional

18   votes cast for each candidate.

19   In no event may the information required

20   to be displayed under this clause be dis-

21   played later than noon on the day fol-

22   lowing the date of the election (or, with re-

23   spect to information on early votes, absen-

24   tee ballots, and provisional ballots, prior to

25   the closing of the polls on the date of the

1 election or later than noon on the day fol-
2 lowing the date on which the votes and bal-
3 lots are counted). All of the information re-
4 quired to be posted under this clause shall
5 be presented in a format under which any
6 individual may visit the website and view
7 and download all of the information.

8   ''(v) Each website on which informa-
9 tion is posted under clause (iv) shall in-
10 clude information on the procedures by
11 which discrepancies shall be reported to
12 election officials. If any discrepancy exists
13 between the posted information and the
14 relevant preliminary certification, the ap-
15 propriate election official shall display in-
16 formation on the discrepancy on the
17 website on which the information is posted
18 under clause (iv) not later than 24 hours
19 after the official is made aware of the dis-
20 crepancy, and shall maintain the informa-
21 tion on the discrepancy and its resolution
22 (if applicable) on such website during the
23 entire period for which results of the elec-
24 tion are typically maintained on such
25 website.

1 "(vi) The appropriate election official
2 shall preserve archived copies of the pre-
3 liminary certifications prepared under
4 clause (ii) and reports of discrepancies
5 filed by certified tabulation observers for
6 the period of time during which records
7 and papers are required to be retained and
8 preserved pursuant to title III of the Civil
9 Rights Act of 1960 (42 U.S.C. 1974 et
10 seq.) or for the same duration for which
11 archived copies of other records of the elec-
12 tion are required to be preserved under ap-
13 plicable State law, whichever is longer.

14 "(B) TREATMENT OF BALLOTS CAST AT
15 EARLY VOTING SITES.—

16 "(i) APPLICATION.—The requirements
17 of this subparagraph shall apply with re-
18 spect to the preliminary certification of the
19 tabulation of, and the public posting of in-
20 formation related to, ballots cast by indi-
21 viduals in person at designated sites prior
22 to the date of the election.

23 "(ii) DAILY COUNT OF EARLY BAL-
24 LOTS CAST.—At the close of business on
25 each day on which ballots described in

1 clause (i) may be cast prior to the date of
2 the election, the appropriate election offi-
3 cial at each such site shall—

4   "(I) post a preliminary count of
5   the total number of individuals who
6   appeared at the site to cast ballots,
7   determined by reference to the num-
8   ber of signatures in a sign-in book or
9   other similar independent count, and
10   the total number of ballots cast (ex-
11   cluding information on the votes re-
12   ceived by individual candidates);

13   "(II) under the observation of
14   certified tabulation observers admitted
15   to the site under subparagraph (F) (if
16   any), prepare and post a paper copy
17   of a preliminary certification of the
18   information described in subclause (I),
19   and shall ensure that each of the cer-
20   tified tabulation observers admitted to
21   the site has full access to observe the
22   process by which the preliminary cer-
23   tification is produced and a reasonable
24   period of time to review the prelimi-

1 nary certification before the site is

2 closed; and

3 "(III) display at the site during

4 regular business hours for the dura-

5 tion of the early voting period a paper

6 copy of the preliminary certification

7 prepared under subclause (II).

8 "(iii) APPLICATION OF GENERAL TAB-

9 ULATION REQUIREMENTS.—Upon the clos-

10 ing of the polls on the date of the election,

11 the appropriate election official at the site

12 at which such ballots are secured shall

13 meet the requirements of subparagraph

14 (A) with respect to such ballots (including

15 requirements relating to the role of cer-

16 tified tabulation observers) in the same

17 manner as an election official at a polling

18 place.

19 "(C) TREATMENT OF ABSENTEE BAL-

20 LOTS.—

21 "(i) DAILY COUNT OF BALLOTS

22 MAILED AND RECEIVED.—At the close of

23 each business day on which a State mails

24 or accepts absentee ballots cast in an elec-

25 tion for Federal office prior to the date of

1 the election, the appropriate election offi-

2 cial shall—

3   ''(I) tabulate the total number of

4   absentee ballots mailed and received

5   by the official during that day and a

6   separate count of the number of ab-

7   sentee ballots received but rejected

8   (separated into categories of the rea-

9   sons for rejection);

10   ''(II) under the observation of

11   certified tabulation observers admitted

12   under subparagraph (F) to the site at

13   which the ballots are mailed and re-

14   ceived (if any), prepare and post a

15   paper copy of a preliminary certifi-

16   cation of the information described in

17   subclause (I), and ensure that each of

18   the certified tabulation observers ad-

19   mitted to the site has full access to

20   observe the process by which the pre-

21   liminary certification is produced and

22   a reasonable period of time to review

23   the preliminary certification before the

24   site is closed; and

1 "(III) display at the site during

2 regular business hours for the dura-

3 tion of the period during which absen-

4 tee ballots are processed a paper copy

5 of the preliminary certification pre-

6 pared under subclause (II).

7 "(ii) APPLICATION OF GENERAL TAB-

8 ULATION REQUIREMENTS.—At the close of

9 business on the last day on which absentee

10 ballots are counted prior to the certifi-

11 cation of the election, the appropriate elec-

12 tion official at the site at which absentee

13 ballots are received and counted shall meet

14 the requirements of subparagraph (A) with

15 respect to such ballots (including require-

16 ments relating to the role of certified tab-

17 ulation observers) in the same manner as

18 an election official at a polling place.

19 "(D) TREATMENT OF PROVISIONAL BAL-

20 LOTS.—At the close of business on the day on

21 which the appropriate election official deter-

22 mines whether or not provisional ballots cast in

23 an election for Federal office will be counted as

24 votes in the election (as described in section

25 302(a)(4)), the official shall—

1   "(i) post a preliminary count of the

2   number of such ballots for which a deter-

3   mination was made, the number of ballots

4   counted, and the number of ballots rejected

5   (separated into categories of the reason for

6   the rejection);

7   "(ii) under the observation of certified

8   tabulation observers admitted under sub-

9   paragraph (F) to the site at which the de-

10   termination is made (if any), prepare and

11   post a paper copy of a preliminary certifi-

12   cation of the information described in

13   clause (i), and ensure that each of the cer-

14   tified tabulation observers admitted to the

15   site has full access to observe the process

16   by which the preliminary certification is

17   produced and a reasonable period of time

18   to review the preliminary certification be-

19   fore the site is closed; and

20   "(iii) display at the site during reg-

21   ular business hours for the duration of the

22   period during which provisional ballots are

23   processed a paper copy of the preliminary

24   certification prepared under clause (ii).

1   "(E) REQUIREMENTS IN CASE OF SYSTEM

2   FAILURE DURING TABULATION.—The appro-

3   priate election officials shall prepare and post

4   contingency plans which will enable the officials

5   to meet the requirements of this paragraph in

6   the event of machine failure.

7   "(F) ADMISSION OF CERTIFIED TABULA-

8   TION OBSERVERS.—

9   "(i) CERTIFIED TABULATION OB-

10   SERVER DEFINED.—In this paragraph, a

11   'certified tabulation observer' is an indi-

12   vidual who is certified by an appropriate

13   election official as authorized to carry out

14   the responsibilities of a certified tabulation

15   observer under this paragraph.

16   "(ii) SELECTION.—In determining

17   which individuals to certify as tabulation

18   observers and admit to a polling place or

19   other location to serve as certified tabula-

20   tion observers with respect to an election

21   for Federal office, the election official shall

22   give preference to individuals who are af-

23   filiated with a candidate in the election, ex-

24   cept that—

15

1 "(I) the number of individuals

2 admitted who are affiliated with the

3 same candidate for Federal office may

4 not exceed one; and

5 "(II) the maximum number of in-

6 dividuals who may be admitted shall

7 equal the number of candidates in the

8 election plus 3, or such greater num-

9 ber as may be authorized under State

10 law.

11 "(iii) RESPONSIBILITIES OF ELECTION

12 OFFICIALS.—The appropriate election offi-

13 cial shall provide certified tabulation ob-

14 servers with assistance and materials nec-

15 essary to enable the observers to carry out

16 their responsibilities under this paragraph,

17 including—

18 "(I) providing not fewer than 2

19 hours of training;

20 "(II) providing sample prelimi-

21 nary certification reports consistent

22 with the reports which will be used on

23 the date of the election; and

24 "(III) furnishing each observer

25 with an appropriate badge or other

1 identification which may be worn
2 while the observer is exercising the ob-
3 server's function under this para-
4 graph.

5 "(iv) NO EFFECT ON ADMISSION OF
6 OTHER OBSERVERS.—Nothing in this sub-
7 paragraph may be construed to limit or
8 otherwise affect the authority of other indi-
9 viduals to enter and observe polling place
10 operations under any other law, including
11 international observers authorized under
12 any treaty or observers of the Federal Gov-
13 ernment authorized under the Voting
14 Rights Act of 1965.

15 "(G) MANDATORY HAND RECOUNT IN
16 CASE OF UNRESOLVED DISCREPANCY.—

17 "(i) RECOUNT IN THE CASE OF UNRE-
18 SOLVED DISCREPANCY REQUIRED PRIOR
19 TO CERTIFICATION OF RESULT.—If the
20 chief State election official determines, on
21 the basis of information reported under
22 subparagraph (A), that there is an unre-
23 solved discrepancy between the information
24 posted on the website of the chief State
25 election official and the preliminary certifi-

1   cation provided to a certified tabulation ob-
2   server under subparagraph (A) for any
3   precinct in which ballots are cast in an
4   election, the chief State election official
5   may not issue a final certification of the
6   results of the election until the appropriate
7   election official has completed a hand
8   count of the ballots cast in the election in
9   the precinct in which the unresolved dis-
10   crepancy exists, using the voter-marked
11   paper ballots or voter-verifiable paper
12   records of votes cast on voting machines if
13   required by Federal or State law or used
14   in the jurisdiction, or (if not so required or
15   used) the permanent paper records re-
16   quired to be produced under paragraph
17   (2).

18   ''(ii) POSTING OF INFORMATION.—
19   The chief State election official shall en-
20   sure that the information obtained during
21   the hand count conducted under clause (i),
22   including the final certified vote totals,
23   shall be displayed on the official public
24   websites of the applicable local election of-
25   ficial and chief State election official using

1   the same categories and in the same man-

2   ner applicable to the information required

3   to be displayed with respect to a prelimi-

4   nary vote count under subparagraph

5   (A)(iv).

6   "(H) NO EFFECT ON OTHER TABULATION

7   REQUIREMENTS.—Nothing in this Act may be

8   construed to supersede any requirement that an

9   election official at a polling place report vote to-

10   tals to a central tabulation facility and address

11   discrepancies the official finds in the aggrega-

12   tion of those totals with other vote totals.".

13   (b) EFFECTIVE DATE.—Section 301(d) of such Act

14 (42 U.S.C. 15481(d)) is amended by striking "January

15 1, 2006" and inserting "January 1, 2006 (or, in the case

16 of the requirements of subsection (a)(7), shall meet such

17 requirements with respect to each election for Federal of-

18 fice held after the expiration of the 1-year period which

19 begins on the date of the enactment of the Vote Tabula-

20 tion Audit Act of 2010)".

SEC. 3. PAYMENTS TO STATES TO COVER COSTS OF CAR-
RYING OUT TABULATIONS AT CERTAIN POLL-
ING PLACES OF VOTES CAST ON PAPER OPTI-
CAL SCAN BALLOTS.

(a) PAYMENTS.—Subtitle D of title II of the Help America Vote Act of 2002 (42 U.S.C. 15321 et seq.) is amended by adding at the end the following new part:

"PART 7—PAYMENTS TO COVER COSTS OF TAB-ULATIONS OF VOTES CAST ON PAPER OPTI-CAL SCAN BALLOTS

"SEC. 297. PAYMENTS TO STATES TO COVER COSTS OF CAR-
RYING OUT TABULATIONS AT CERTAIN POLL-
ING PLACES OF VOTES CAST ON PAPER OPTI-
CAL SCAN BALLOTS.

"(a) PAYMENTS TO STATES.—The Commission shall make payments to reimburse eligible States for the costs incurred in obtaining and operating the equipment necessary to tabulate at the polling places described in subsection (c) the votes cast on any paper optical scan ballots used at such polling places, as required under section 301(a)(7)(A)(i).

"(b) AMOUNT OF PAYMENT.—The amount of the payment made to a State under this part shall be based upon the reasonable costs incurred by the State in obtaining and operating the equipment described in subsection (a), as determined on the basis of information provided

1 by the State at such time and in such form as the Com-

2 mission may require.

3 "(c) POLLING PLACES DESCRIBED.—A polling place

4 is described in this subsection if, with respect to the most

5 recent elections for Federal office held in the State prior

6 to the enactment of the Vote Tabulation Audit Act of

7 2010—

8   "(1) the votes cast in the election were cast on

9   paper optical scan ballots; and

10   "(2) the votes cast on such ballots were not

11   tabulated at the polling place but at a central count

12   optical scan facility in the State.

13 **"SEC. 297A. AUTHORIZATION OF APPROPRIATIONS.**

14   "There are authorized to be appropriated for pay-

15 ments under this part such sums as may be necessary,

16 to remain available until expended.".

17   (b) CLERICAL AMENDMENT.—The table of contents

18 of such Act is amended by adding at the end of the item

19 relating to subtitle D of title II the following:

"PART 7—PAYMENTS TO COVER COSTS OF TABULATIONS OF VOTES CAST
ON PAPER OPTICAL SCAN BALLOTS

"Sec. 297. Payments to States to cover costs of carrying out tabulations at cer-
tain polling places of votes cast on paper optical scan ballots.
"Sec. 297A. Authorization of appropriations.".

SEC. 4. ADOPTION OF MODEL POSTING FORMAT BY ELEC-TION ASSISTANCE COMMISSION.

(a) ADOPTION OF MODEL FORMAT.—Part 3 of subtitle B of title II of the Help America Vote Act of 2002 (42 U.S.C. 15361 et seq.) is amended by adding at the end the following new section:

"SEC. 223. MODEL FORMAT FOR POSTING TABULATION OF VOTES AND AGGREGATE VOTE COUNTS.

"(a) ADOPTION OF MODEL FORMAT.—In the same manner as the Commission adopts the voluntary voting system guidelines under section 222, the Commission shall adopt a model format for the posting of the tabulation of votes and aggregate vote counts which may be used by States in meeting the requirements for the tabulation and aggregation of vote counts produced by voting systems under section 301(a)(7).

"(b) DEVELOPMENT OF PROPOSED MODEL FORMAT BY DEVELOPMENT COMMITTEE.—In addition to the duties described in section 221(b), the Development Committee shall develop and forward to the Executive Director of the Commission a proposed model format for the Commission to adopt under this section.".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end of the items relating to part 3 of subtitle B of title II the following new item:

"Sec. 223. Model format for posting tabulation of votes and aggregate vote counts.".

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